

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

ORIGINAL

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BPS
75-1299

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

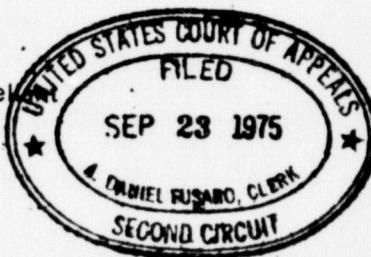
DANIEL STALEY,

Defendant-Appellant.

*On Appeal From The United States District Court
For The Eastern District Of New York*

Appellant's Appendix

MEYER GROSSMAN
Attorney for Defendant-Appellant
26 Court Street
Brooklyn, N.Y.



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DOCKET ENTRIES

D. C. Form No. 100

CRIMINAL DOCKET

74CR 226

74.24
74-CP 489 JUDP
74-CP 489 JUDP

DATE	PROCEEDINGS
3-28-74	Before Bartels J - Indictment filed - Bench Warrant Ordered/Issued
4-1-74	Before Judd, J - case called & adjd to 4-4-74 at 2:00 PM.
4-4-74	Notice of Appearance filed.
4-4-74	Before JUDD, J - case called - Meyer Grossman present for deft - deft brought into court on a bench warrant - deft arraigned and enters a plea of not guilty - bail hearing set for 4-19-74 at 10:00 am.
4-9-74	Notice of Readiness for trial filed.
4-19-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - defts motion for reduction of bail - motion argued and denied - bail contd at \$100,000 Surety Bond - case adjd to May 20 1974 for trial.

74CR 226

DATE

PROCEEDINGS

20-74 Before JUDD, J. - Case called- Adj'd to 5-22-74 at 1:45 A.M.

2-74 Before JUDD, J. - Case called- Adj'd to 5-29-74

3-74 Before JUDD, J - case called deft & counsel M.Grossman present - adj'd to June 17, 1974 for trial.

2-74 Notice of Motion filed ret. June 17, 1974, for bail review.

7-74 Affidavit of MEYER I. GROSSMAN filed

7-74 Before JUDD, J - case called - deft present - counsel not present - Trial adj'd to June 20, 1974.

20-74 Before JUDD, J. - Case called- Deft and counsel present- Deft's motion for bail reduction- Granted- Bail reduced to \$50,000 Surety Bond Discovery hearing set down for 6-28-74 at 10:00 A.M. Trial set for 7-1-74 at 10:00 A.M.

25-74 Notice of motion for discovery and inspection,etc. filed ret. 6-28-74 at 11:30 A.M.

28-74 Before JUDD, J. - Case called- Deft and counsel present- Motion argued- Granted in part and denied in part as indicated- Case adj'd to 7/8/74 for trial

2-74 By JUDD, J. - Order filed that motion disposed of on the record in open court, June 28, 1974 (order on back of motion papers filed 6-25-74)

3-74 Before JUDD, J - case called - deft Staley & counsel M.I. Grossman present - adj'd to July 15, 1974 for trial.

5-74 Petition for Writ of Habeas Corpus Ad Testificandum filed.

5-74 By Judd, J - Writ Issued, ret. July 16, 1974.

15-74 Before JUDD, J - case called - deft & counsel M.I.Grossman present - defts motion for reduction of bail argued and denied - case adj'd to July 18, 1974 at 10:00 am for trial.

18-74 Before JUDD, J - case called - deft & counsel Meyer Grossman present - trial ordered & BEGUN - Jurors selected and sworn - Govt opens - Deft opens - trial contd to July 22, 1974 at 10:00 am.

22-74 Before JUDD, J.- Case called- Deft and counsel present- Trial resumed- Trial contd to 7-23-74 at 10:00 A.M.

23-74 Before JUDD, J - case called - deft & counsel Meyer Grossman present - Trial resumed - Defts motion for mistrial or a continuance - motion denied - Hearing begun on admissibility of photographs - hearing concluded - defts motion to suppress is denied - stipulation read into the Record - Govt rests - defts motion to dismiss argued - motion denied - trial contd to July 24, 1974.

74 CR--226
CRIMINAL DOCKET

DATE	PROCEEDINGS
7-24-74	Before JUDD, J - case called - deft & counsel present - Trial resumed - deft rests - Govt opens on rebuttal - Govt rests on rebuttal - deft opens on sur-rebuttal - both sides rests - defts motion to dismiss is denied - Govt sums up - Deft sums up - trial contd to July 25, 1974.
7-25-74	Before JUDD, J - case called - deft & counsel Meyer Grossman present - trial resumed - judge charges jury - alternates discharged - marshals sworn - jury retires to deliberate at 10:40 am. Order of sustenance signed - jury returns at 12 noon to hear testimony - jury resumed deliberations at 12:10 PM. Jury returns at 2:50 PM to hear testimony read back - jury resumes deliberations at 3:05 PM - Jury returns at 3:30 PM and renders a verdict of guilty on counts 1 to 7 inclusive - jury polled - trial concluded - Jury discharged - deft renews all motions previously made - motions denied - bail conditions continued - case adjd without date for sentencing.
7-25-74	By JUDD, J - Order of sustenance filed (Lunch)
7-26-74	Writ ret'd and filed - executed
9-11-74	4 stenographers transcripts filed (one dated 7-18-74; one dated 7-22-74; one dated 7-23-74 and one dated 7-25-74)
9/20/74	Before JUDD, J - Case called - deft present - Counsel not present - Deft's motion for adjournment filed, adjd to 10/4/74
9/27/74	Deft's motion for adjournment filed.
10-7-74	Before JUDD, J - case called - Deft & counsel Meyer Grossman present - defts motion for a new trial based on newly acquired evidence - hearing begun - hearing concluded - motion for a new trial is denied - deft sentenced to imprisonment for a period of 11 years on counts 1, 3 & 5 to run concurrently; 10 years on counts 2, 4 & 6 to run concurrently with each other and with counts 1, 3 & 5 and 5 years on count 7 to run concurrently with sentence imposed on counts 1 through 6. Sentence imposed is pursuant to 18:4208(a)(1) with eligibility for parole after 24 years. Deft advised of right to appeal.
10-7-74	Judgment and Commitment filed - certified copies to Marshal.

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA
-against-

Cr. No. 74CR226
(T. 18, U.S.C., §2113(c), §2
and §2113(d))

DANIEL STALEY,
Defendant.

3-28-74

-----x Judd, J.

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Fritz Emanual Bastian, Larry Coates, Larry Derrick and Arthur Mitchell in knowingly and intentionally, by force, violence and intimidation taking from the person and presence of the employees of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, approximately \$17,038.49 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense, Fritz Emanual Bastian, Larry Coates and Larry Derrick did assault and place in jeopardy the lives of the bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT TWO

On or about the 12th day of December, 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possessed approximately \$2000 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, U.S.C., §2113(c)).

COUNT THREE

On or about the 18th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Larry Coates, Horace Peterson and Jimmy Fennell in knowingly and intentionally by force, violence and intimidation taking from the person and presence of employees of the Reliance Federal Savings and Loan Association, 233-15 Hillside Avenue, Queens, New York approximately \$7,979.00 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Association and in

commission of this act and offense, Larry Coates, Horace Peterson and Jimmy Fennell did assault and place in jeopardy the lives of said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d) and Section 2).

COUNT FOUR

On or about the 18th day of December 1973, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possess approximately \$2000.00 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the Reliance Federal Savings and Loan Association, 233-15 Hillside Avenue, Queens, New York, the deposits of which were insured by the Federal Savings and Loan Association at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, United States Code, Section 2113(c)).

COUNT FIVE

On or about the 3rd day of January 1974, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally aided and abetted Larry Coates, Larry Derrick and Jimmy Fennell in knowingly and intentionally by force, violence and intimidation taking from the person and presence of employees of the

Bayside Federal Savings and Loan Association, 257-25 Union Turnpike, Queens, New York approximately \$12,334.00 in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Savings and Loan Association, and in the commission of this act and offense, Larry Coates, Larry Derrick, and Jimmy Fennell did assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons. (Title 18, United States Code, Sections 2113(d) and 2).

COUNT SIX

On or about the 3rd day of January 1974, within the Eastern District of New York, the defendant DANIEL STALEY knowingly and intentionally possessed approximately \$2000.00 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the Bayside Federal Savings and Loan Association, 257-25 Union Turnpike, Queens, New York, the deposits of which were insured by the Federal Savings and Loan Association at the time of such taking and carrying away, the defendant DANIEL STALEY knew said money to have been so taken and carried away. (Title 18, United States Code, Section 2113(c)).

COUNT SEVEN

From on or about the 12th day of December 1973 and continuing thereafter up to and including the 24th day of January 1974, in the Eastern District of New York and elsewhere, the defendant DANIEL STALEY knowingly and intentionally combined, conspired, confederated and agreed with Fritz Emanuel Bastian, Larry Coates, Larry Derrick, Arthur Mitchell, Horace Peterson and Jimmy Fennell, (named as co-conspirators but not as co-defendants) and with other persons to the Grand Jury unknown, to commit the following offenses against the United States to knowingly and intentionally take by force, violence and intimidation from the person and presence of employees of various banks, sums of money, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Association, and in the commission of this act and offense to assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of dangerous weapons in violation of Title 18, United States Code, Section 2113(d).

In furtherance of the conspiracy and to effect the objects thereof, the defendant DANIEL STALEY performed the following:

OVERT ACTS:

1. On December 12, 1973, the defendant DANIEL STALEY gave to Fritz Emanuel Bastine, Larry Coates, and Larry Derrick, one handgun each.

2. On December 18, 1973, the defendant DANIEL STALEY gave to Larry Coates, Horace Peterson and Jimmy Fennell, one handgun apiece.

3. On January 3, 1974, the defendant DANIEL STALEY gave to Larry Coates, Larry Derrick, and Jimmy Fennell one handgun apiece and drove the switch car after the completion of the robbery.

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

AFFIDAVIT OF LEROY JONES

STATE OF NEW YORK)
NEW YORK COUNTY)ss:

I, LEROY JONES, being duly sworn, deposes and says:
That on the 9th of August 1974, I voluntarily surrendered myself to the
City Police in Aiken, South Carolina, and explained there was a Warrant
issued by the Department of Justice, New York Office, for my arrest on a
charge of Bank Robbery.

After being lodged overnight in the County Jail, the F.B.I. took
custody of me the next morning and brought me to the F.B.I. Office in
Columbus, South Carolina, whereupon I was questioned as to other individuals
whose names appeared on the Warrant of Arrest.

I told the F.B.I. that the reason why I turned myself in was because
because there was an innocent man in jail for the crime of Bank Robbery
which I and Two others committed.

I was asked who was the innocent man involved and I answered
DANIEL STALEY.

I was then taken to a Judge in Columbia, South Carolina and
given a Lawyer named: JAN S. STIFFLING, RARRINGER BLDG, Columbia, S.C.,
who advised me not to plead guilty or admit my participation in any crimes.
But I had already admitted that I was guilty and that I had stolen the car of
of DANIEL STALEY and used it to commit the Bank Robbery with Larry Derrick
and another guy on the Bank located at 85th Street in Bklyn, N.Y.

I had worked for Mr. STALEY and to my knowledge he never was
involved in any Bank Robbery.

I make this statement of my own free will and reasoned choice
and the reason why I turned myself in was because my conscience was
troubling me and I thought that I could testify in Mr. STALEY's behalf
at a Trial.

When I came to West Street on the morning of August 31, 1974,
I told my story to an Inmate who advised me that if I insisted upon
exonerating Mr. STALEY, I would be found guilty and subject to extensive
punishment up to Twenty (20) Years for the crimes. This Inmate also, told
me that If I was not telling the truth I could also be prosecuted for
perjury if I was afraid of STALEY that this Inmate would get the Jail
officials to protect me.

Respectfully Submitted

LEROY JONES
427 West Street
New York City, New York

Sworn to before me on this

4 day of Sept, 1974

Attala, D.A. - C.M.W.
F.D.H. M.J.

10

OF JULY 1975

SEARCHED INDEXED SERIALIZED FILED

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Charge

2 (The jury enters the courtroom.)

3 THE COURT: Good morning, Miss O'Brien, Mr.
4 Grossman, Mr. Staley.

5 Mr. Foreman, members of the jury, we are now
6 reaching the point when you perform your task in
7 the proceeding. You have heard the evidence and
8 arguments of counsel.

9 It is my duty to instruct you as to the law
10 that applies in the case. I will describe
11 first the general principles that apply to all
12 criminal trials, and then the nature of the charge
13 in this case and specific rules of law that
14 apply to those charges, and then something about
15 how to evaluate the evidence you have heard,
16 and finally something about how you should reach
17 a verdict.

18 It is your duty as jurors to follow the law
19 as I stated in my instructions and to apply the
20 rules of law to the facts as you find them from
21 the evidence in the case.

22 You are the sole judges of the facts. You
23 are to perform this duty without bias or prejudice
24 or against either party.

25 The law does not permit jurors to be governed

1 2 Charge

2 by sympathy or prejudice or even public opinion.

3 The law presumes that a defendant is innocent
4 of crime. The law permits nothing but the
5 legal evidence presented before the jury to be
6 considered in support of any charge.

7 This presumption of innocence continues at
8 every stage of the trial and is enough in itself
9 to acquit a defendant unless the jurors are
10 satisfied of his guilt beyond a reasonable doubt
11 from all the evidence in the case.

12 I will just say a few words about what the
13 law means by reasonable doubt, adding a little
14 bit to what may be plain words.

15 A reasonable doubt is a fair doubt based on
16 reason and common sense arising from the state
17 of the evidence or from the absence of evidence.
18 A reasonable doubt does not mean a doubt that a
19 juror asserts arbitrarily or capriciously as to
20 avoid performing an unpleasant task.

21 It is rarely possible to prove anything to
22 an absolute certainty or beyond a possible doubt,
23 and the law does not require this.

24 Proof beyond a reasonable doubt is often
25 described as referring to the type of doubt that

1 3 Charge

2 would make you hesitate to act in your own
3 important affairs when you have to make a
4 decision.

5 Prove beyond a reasonable doubt operates
6 on the whole case. The rule does not mean that
7 each bit of evidence must be proved beyond a
8 reasonable doubt, or in this case you don't have
9 to establish that a particualr witness is truthful
10 beyond a reasonable doubt.

11 You can consider the sum total of the Govern-
12 ment's evidence as affected by the sum total of the
13 defendant's evidence, and determine whether on
14 that basis you are satisfied beyond a reasonable
15 doubt as to each element of the crime charged, or
16 else you must acquit him.

17 Finding a citizen to be guilty of a felony
18 and subjecting him to criminal penalties is a
19 serious matter, and you can consider this fact
20 in determining whether you have a reasonable doubt.

21 Nevertheless, if you are convinced beyond
22 a reasonable doubt of the defendant's guilt, you
23 should find him guilty and not be swayed by
24 sympathy.

25 I am going to read the typical counts of

1 4 Charge

2 the indictment. Before I do so, I will say again,
3 an indictment is just a formal method of accusing
4 a defendant of a crime. It is not evidence of
5 any kind against the accused, and the fact that
6 a grand jury made an indictment does not create
7 any presumption, does not create any inference
8 of guilt.

9 The defendant has pleaded not guilty. The
10 indictment and this plea creates the issue
11 which you must decide.

12 One thing more, the law never imposes on
13 a defendant in a criminal case the burden or
14 duty of producing any evidence. The burden
15 of proof always rests on the prosecution to prove
16 every essential element of the crime beyond a
17 reasonable doubt. This burden never shifts.
18 The defendant is under no obligation to prove his
19 innocence; in fact, no obligation to prove
20 anything.

21 A defendant may present himself as a
22 witness as Mr. Staley did in this case. In that
23 even he is subject to cross-examination, as
24 you have observed, and his credibility is for you
25 as a jury to determine, subject to approximately

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Charge

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the same rules that apply to other witnesses.

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You can consider that a defendant has a strong motive to lie to protect himself, and that somebody who supplied guns for a bank robbery might not hesitate to lie his way out of it. But you should also consider that somebody who is falsely charged with supplying guns for a bank robbery is perhaps the only one that could tell what happened at a particular conversation.

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You consider cross-examination and all the evidence in determining what weight to give to the defendant's testimony, whether to believe him or how much of it to believe.

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The indictment charges in Count 1 that:

"On or about the 12th day of December 1973, within the Eastern District of New York," which includes all of Long Island, the defendant, Daniel Staley, knowingly and intentionally aided and abetted Fritz Bastion, Larry Coates, Larry Derrick, and Arthur Mitchell, in knowingly and intentionally by force, violence and intimidation, taking from the person and presence of the employees of National Bank of North America, 152-80 Rockaway

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Charge

Boulevard, Queens, New York, approximately \$7,038.49 in United States currency, which money was in the care, custody, control, management and possession of said bank, the deposit of which bank was then and there insured by Federal Deposit Insurance Corporation; and in the commission of this act and offence, Fritz Bastion, Larry Coates and Larry Derrick did assault and place in jeopardy the lives of bank employees as well as the lives of other persons present by the use of a dangerous weapon."

The charge is violation of Title 18, United States Code, Sections 21, 13-D.

Count 2 says that, "On or about the 12th day of December, 1973, within the Eastern District of New York, the defendant Daniel Staley knowingly and intentionally possessed approximately \$2,000 which had been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the National Bank of North America, 152-80 Rockaway Boulevard, Queens, New York, the deposits of which were insured by the Federal Deposit Insurance Corporation at the time of said taking and

1 7 Charge

2 carrying away."

3 This charge is in violation of Title 18,
4 Section 21, 13-C.

5 Count 3 is like Count 1, except that it
6 gives the date on or about December 18, 1973, and
7 defendant Daniel Staley is charged with aiding
8 and abetting Larry Coates, Horace Peterson and
9 Jimmy Fennell in taking money from the person
10 and presence of employees of Reliance Federal
11 Savings & Loan Association, 233-15 Hillside Avenue,
12 Queens, New York, and the amount is stated as
13 approximately \$7,979.

14 Count 4 is like Count 2. It relates to
15 the money stolen from the Reliance Federal Savings
16 & Loan Association.

17 Count 5 is like Count 1, except that the
18 date is on or about January 3, 1974, and the
19 persons who Daniel Staley is alleged to have
20 aided and abetted are Larry Coates, Larry Derrick
21 and Jimmy Fennel, and the money is alleged to have
22 been taken from the Bayside Federal Savings & Laan
23 Association, 257-25 Union Turnpike, Queens, New
24 York, and to have been approximately \$12,334.

25 Count 6 is like Count 2, but it relates

to the possession of \$2,000 taken from the Bayside
Federal Savings & Loan Association.

Now, the amounts and the dates in the indictment don't have to be exactly accurate.

Now, I think there was one bank from which Mr. Staley was supposed to have received \$2,000, and of which \$500 was paid to the driver. On the others, the evidence, if you believe it, would indicate that he got \$500 apiece from two of the participants and \$150 from Jimmy Fennel, which would be \$1150 instead of \$2,000.

That is not a material variation if you find
that Mr. Staley did receive the amounts.

Count 7 is a conspiracy count. That charges that, "From on or about the 12th day of December, 1973, continuing thereafter up to and including the 24th day of January 1974, in the Eastern District of New York and elsewhere, the defendant Daniel Staley knowingly and intentionally combined, confided, and agreed with Fritz Bastion, Larry Coates, Larry Derrick, Arthur Mitchell, Horace Peterson, Jim Fennell, named as co-conspirators, not co-defendant, and with other persons unknown to the grand jury, to

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Charge

commit the following offenses against the United States, knowingly and intentionally to take by force, violence and intimidation from the person and presence of employees of various banks sums of money, which money was in the care, custody, control, management and possession of said banks the deposits of which banks were then and there insured by the Federal Deposit Insurance Corporation and the Federal Savings & Loan Association, and in the commission of these acts and offenses to assault and place in jeopardy the lives of the said bank employees as well as the lives of other persons present by the use of dangerous weapons in violation of Title 18, United States Code, Section 21,13-D."

The count charges a violation of Title 18, United States Code, Section 371.

The indictment continues: "In furtherance of the conspiracy and to effect the object thereof, the defendant Daniel Staley performed the following acts:

"1. On December 12, 1973, the defendant Daniel Staley gave to Fritz Emanuel Bastian, Larry Coates and Larry Derrick one handgun each;

2 "2. On December 18, 1973, the defendant
3 Daniel Staley gave to Larry Coates, Horace Peterson,
4 and Jim Fennell one handgun apiece; and

5 "3. On January 3, 1974, the defendant Daniel
6 Staley gave to Larry Coates, Larry Derrick, and
7 Jimmy Fennel one handgun apiece and drove the switch
8 c - after the completion of the robbery."

9 Now, again, this is a statement of the
10 charge. It is not evidence that you would consider
11 as supporting the guilt of the defendant.

12 Counts 1, 3 and 5 of the indictment are
13 based on Section 21.13-D of the United States
14 Code, which says: "Whoever by force and
15 violence or by intimidation takes or attempts
16 to take from the person or presence of another
17 any property or money or anything of value
18 belonging to or in the care, custody, control,
19 management or possession of any bank, credit
20 union or savings and loan association, and
21 in committing or attempting to commit such an
22 offense, assaults any person or puts in jeopardy
23 the life of any person by the use of a dangerous
24 weapon or device shall be fined or imprisoned" --
25 while we are talking about the amount of penalty,

that is something I decide and not the jury, so
I am not going to repeat that.

"Banks and savings and loan associations"
are defined as banks whose deposits are insured
by Federal Deposit Insurance Corporation or
savings and loan associations as defined in the
statute.

Section 2 of Title 18 of the United States
Code is the aiding and abetting statute. This
says, "Whoever commits an offense ~~against~~ against the
United States or aids, abets, counsels, commands,
induces or procures its commission is punishable as
a principal."

That means that a person who aids in committing
a crime is just as guilty as the one who actually
commits it.

However, knowledge that a crime is being
committed even when coupled with presence at the
scene is generally not enough to constitute
aiding and abetting.

If Mr. Staley was present and gave out hand-
guns, then he was aiding and abetting. If one
of the robbers came back ^{the} to store and divide up
the money, and Mr. Staley wasn't there, or if he

2 was there and knew about it and had nothing to
3 do with it, that is not enough to consider, to
4 find him guilty.

5 You must find that he had something to do with
6 the planning of the crime, with the recruitment of
7 the individuals or with the delivery of guns to
8 them in order to find that he was aiding and abet-
9 ting. In other words, in order to aid and abet
10 another person to commit a crime, it is necessary
11 that the defendant in some way associated himself
12 with the venture, participated in it as something
13 he wanted to bring about and seeks by his actions
14 to make it succeed.

15 Now, the fourth count in the indictment refers
16 to -- oh, wait a minute. I have the fourth and
17 sixth count to refer to, and they are based on
18 Section 21,13-C, which says, "Whoever receives,
19 possesses, conceals, stores, barters, sells,
20 or disposes of any property or money or other
21 thing of value, knowing the same to have been taken
22 from a bank, credit union or savings and loan
23 association in violation of this section shall
24 be subject to punishment provided," and subsection
25 "B", "for the taking" -- and that is a lesser

penalty which I need not describe, because receiving money from a bank robbery is a crime whether it was committed with a gun or not. The gun makes it a little more -- provides for a little more serious penalty.

Then the seventh count of the indictment is the conspiracy count, and this is based on a section which says, "If two or more persons conspire to commit any offense against the United States, and one or more of such persons does any act to effect the object of the conspiracy," each shall be punished as the law provides.

Again, I do not give the nature of the penalty, but it is less than the penalty for the bank robbery itself.

The elements of a crime that normally have to be established for a bank robbery are first the act or act of taking money belonging to a bank from the person or presence of another. Second, in 21,13-D, taking it by force or violence by the use of a dangerous weapon. Third, doing it wilfully, and fourth, that the bank was insured by the Federal Deposit Insurance Corporation.

Here the problem isn't so much whether these

elements are established as whether the defendant took part even without being there or by driving a getaway car in helping somebody else to take money by force from a bank that was insured by the Federal Deposit Insurance Corporation.

The Counts 2, 4 and 6 under 21,13-C require proof first of possession of the money or receipt of the money, and second, of knowledge that it had been stolen from a bank.

Mr. Staley isn't just charged with renting guns. That would be a State violation. He is charged with receiving money for the guns that he knew had been stolen from a bank, and you have to find that he knew the money was so obtained in order to find him guilty.

The Government must prove every element of the crimes charged beyond a reasonable doubt. If you have a doubt as to any element, you must acquit.

Now, on the conspiracy count a separate set of elements is required. First, that two or more persons were involved, which I guess you can determine here if Mr. Staley is guilty at all, he is guilty of acting in concert with the robbers of the particular banks.

2 Second, that they wilfully and knowingly
3 conspired and agreed, to have to find that Mr.
4 Staley knew what he was doing.

5 Third, that they conspired to do an act
6 forbidden by law, in this case to take money
7 from banks by force and violence.

8 Fourth, that one of the members of the
9 conspiracy did something to effect the object
10 of the conspiracy.

11 Just sitting together and agreeing that
12 you are going to rob a bank isn't enough.
13 Somebody has to do an act toward it, and here
14 Mr. Staley is accused of having provided the gun
15 and in one case having driven the getaway car;
16 and you would have to find that.

17 Again, if any element of the crime is not
18 established beyond a reasonable doubt, your
19 verdict must be not guilty. You can't infer
20 the existence of one element of the crime
21 simply from the existence of the other, but if
22 you find that all the elements of the crime
23 have been proved beyond a reasonable doubt, then
24 you must bring in a verdict of guilty.

25 Now, conspiracy is a little complicated.

I have to read you the rules applicable
to this: A conspiracy is a combination
of two or more persons to accomplish an unlawful
act or a lawful act by unlawful means. While
it involves an agreement to violate the law, it
is not necessary that the persons charged
entered into or expressed a formal agreement
or stated specifically orally or in writing what
the scheme was or how it was to be effected.
It is sufficient to show that they came to
a mutual understanding to accomplish an
unlawful act. Such an agreement can be inferred
from the circumstances and the conduct of
the persons, since ordinarily a conspiracy
is characterized by secrecy. Each member of
the conspiracy may perform separate and distinct
acts.

It is necessary, however, that the Government
prove beyond a reasonable doubt that a defendant was
aware of the common purpose and was a willing
participant with an intent to advance the purpose
of the conspiracy.

Now, there was discussion as to whether
there was proof that these guns were operable.
There was evidence that they were loaded, and

as far as the Federal crime is concerned, if
somebody brandishes a loaded gun at a bank
employee, he cannot excuse himself by saying that
he didn't know whether the gun would work if he
pulled the trigger.

It is not necessary for you to find it
operable. It is just necessary to find that
there were handguns which could be used to
intimidate people in the bank.

Now, there are generally two kinds of evidence
that are referred to in connection with a criminal
trial. One is direct evidence and the other is
indirect or circumstantial evidence.

Direct evidence is the testimony of a witness
like the testimony of Messrs. Fennell, Derrick
and Coates, that they were handed guns by Mr.
Staley and were told what the purpose of the guns
were.

The other is indirect or circumstantial
evidence, which is the proof of the facts pointing
to the existence or non-existence of certain facts.

The Government says that Mr. STaley's report
that his car was stolen, because according to one
of the witnesses, he thought it had been spotted

2 outside the Bayside Bank, is circumstantial
3 evidence that he was a participant in the bank
4 robbery.

5 Mr. Staley points to the fact that there had
6 been a fight with Mr. Coates, and as he alleges
7 in his story, is circumstantial evidence
8 that Mr. Coates had a grudge against him and
9 would lie him into jail in order to satisfy that
10 grudge.

11 As a general rule, the law makes no distinction
12 between direct and circumstantial evidence.
13 Circumstantial evidence to establish guilt does not
14 have to exclude every reasonable hypothesis of
15 innocence. It is only necessary that the jury
16 be satisfied with defendant's guilt beyond a
17 reasonable doubt on the basis of all the evidence
18 in the case, both direct and circumstantial.

19 Now, when you go into the jury room, you do
20 not leave your common sense outside. In analyzing
21 the evidence, you can draw reasonable inferences
22 based on your own common sense, based on your own
23 inference from any facts that you find were proved.
24 You are not confined to the bare bones of the
25 testimony or the exhibits, but you are not permitted

Charge

2 to guess or speculate.

3 You cannot supply things that are not proved
4 in order to establish guilt.

5 I think I said already that knowledge that
6 a crime is being committed even coupled with
7 presence isn't enough to constitute aiding and
8 abetting.

9 Now, you have a difficult task of determining
10 credibility of witnesses and weighing evidence,
11 and in weighing the testimony of the various
12 witnesses, you can consider their relationship
13 to the Government, their bias or their interest
14 in the outcome of the case, their manner while
15 testifying, their candor and intelligence as
16 you observed it. You can consider the extent
17 to which any testimony has been corroborated or
18 contradicted by other credible evidence; in-
19 consistencies within the testimony of any
20 witnesses, either on direct or cross-examination,
21 whether any witness changed his testimony.

22 Inconsistencies in the testimony of witnesses
23 may lead you to disregard their testimony in
24 whole or in part, but a witness may have been
25 mistaken or untruthful with respect to part

Charge

2 of his or her testimony and be correct and
3 truthful with respect to other parts.

4 The witnesses were testifying to things
5 that happened six or seven months ago, and
6 there were four different witnesses about what
7 took place at various bank robberies, and you
8 consider in your own experience what differences
9 there may be between descriptions of the same
10 event that pointed to distance in time and whether
11 any inconsistencies proved a falsehood or
12 whether they can be explained.

13 You are not to give any greater weight
14 or credibility to the testimony of a witness
15 in the case solely because of the fact that he
16 is a Government agent. His testimony is to be
17 evaluated without any plus, without any minus,
18 in the same manner as you would evaluate the
19 testimony of any other witness.

20 We had testimony about some of the witnesses
21 being under the influence of drugs. There
22 really wasn't any testimony as to how that affects
23 a witness's credibility or observation.

24 I think it is common knowledge that when Coleridge
25 wrote the Ancient Mariner, he was on opium.

He was an addict, and that was a magnificent
story.

You can use your own judgment as to how
truthful these particular witnesses were.

Now, we have another special rule that
applies here. The first three Government witnesses,
Mr. Fennel, Mr. Derrick and Mr. Coates were
accomplices. They were taking part in the crime.
Mr. Peterson, who testified for the defendant,
was also an accomplice, but the rule does not
affect him quite as much.

An accomplice is somebody who units with
another person in the commission of a crime volun-
tarily and with common intent, and an accomplice
does not become incompetent as a witness because
of participation in the crime charged.

On the contrary, the testimony of an
accomplice alone, if believed by the jury, may
be of sufficient weight to sustain a verdict of
guilt, even though not corroborated or supported
by other evidence.

However, the jury should keep in mind that
such testimony is always to be received with
caution and weighed with great care. You

2 should never convict a defendant upon the un-
3 supported testimony of an alleged accomplice
4 unless you believe that unsupported testimony
5 beyond a reasonable doubt.

6 Now, here the Government finds corroboration
7 for its accomplice witnesses first by the fact
8 that they bolster each other by the way their
9 stories fit together; second, by minor things
10 like the fact that Mr. Staley had accounts in
11 two of the banks. His brother had an account
12 in one and that might have given him occasion to
13 be in the bank so that he could look around and
14 judge whether it was one that could be robbed.
15 And perhaps corroboration of the three Government
16 witnesses by the fact that Mr. Peterson admitted
17 at least on one occasion the robbers met in
18 Daniel Staley's store, although he said it
19 was at a time when Mr. Staley was not there.

20 There was a proverb quoted to you that it
21 is better to acquit a hundred guilty men than
22 convict one innocent man. That is what a
23 judge said in a case some time ago. It is not
24 a necessary requirement of the law. I don't know
25 that that is the standard of reasonable doubt.

Charge

You will determine reasonable doubt by
what I stated before, whether there is a reasonable
gap in the evidence or doubt in the evidence such as
would make you hesitate to act in important
matters in your own affairs.

I told you at the beginning, and I repeat it
now, you are not to be influenced by the fact that
there were objections to some questions,
some items of evidence, that were sustained.

You are to disregard any evidence that I
struck out. Consider the case only on the
testimony and exhibits that I admitted into evidence
or came in without objection and stipulation of
the parties that they have been received.

I have said a few things about particular
evidence in the case. I am not trying to out-
line the evidence to you. I have used
particular parts as illustrative, and I am not
intending to indicate any opinion as to the guilt
or innocence of the defendants. That is entirely
for you to determine, and if I have been
inaccurate in anything I said about the evidence,
It is your recollection that governs, not what
I said nor what counsel said.

If you want to see some of the evidence,

2 or rehear some of the testimony, it will take a
3 little while to get the court reporter to find the
4 particular part, but you can call for a
5 particular portion if you wish.

6 Now, a few words about reading a verdict.

7 Your verdict must be unanimous on each count.

8 You have to all agree. It is wise to discuss
9 the evidence rather fully before taking even
10 a tentative vote so that no one can jump to
11 a hasty conclusion before weighing the entire
12 case.

13 When you retire to the jury room, you can
14 get the exhibits if you want to look at them.

15 When you go into the jury room, Mr. Quinn
16 can act as your foreman and preside over your
17 deliberations. He will try to see, I hope, that
18 everybody gets a chance to talk, that not more
19 than one person talks at a time so far as
20 possible.

21 During your deliberations, you should assume
22 the attitude as judges of the facts, not
23 partisans or advocates. In that way you will be
24 making a high contribution to the administration
25 of justice.

Charge

2 You should report a verdict on each of the
3 seven counts.

4 While I haven't done so, I think I will
5 prepare a little form to help you in distinguishing
6 the various counts.

7 In determining guilt or innocence of the
8 defendant, do not give any consideration to
9 the matter of punishment. That is exclusively
10 my responsibility.

11 If the defendant is found guilty, I may
12 consider extenuating or exacerbating facts that
13 are not part of the record here.

14 There will be a marshal available outside the
15 jury room to let me know if there are any
16 questions that you want to have answered or to
17 report that you have reached a verdict.

18 When you have reached a verdict, you just
19 write a note to that effect, and when you come
20 in, Mr. Quinn will announce the verdict orally,
21 and then either party may ask that the jury be
22 polled, which means that you may each be asked
23 whether you in fact concur with the verdict so that
24 we can know that it is unanimous.

25 You are each entitled to your own opinions,

but you should exchange views with your fellow
jurors and listen carefully to each other.

You should not hesitate to change your
initial opinion if you are convinced that somebody
else had a more accurate or complete view of
the fact, but you do not have to agree with the
majority. Your decision must be your own.

I have assumed that you may continue
through lunch -- and do you have the luncheon
menu?

THE CLERK: They have been called in already,
Judge.

THE COURT: Which will get in sometime
between twelve and one.

If you haven't reached a verdict by afternoon,
you can determine how late you want to stay or
whether you want to come back tomorrow.

We have a trifle of an anticlimax here,
because counsel have a right to call my
attention to anything I have said that they
disagree with or anything that I may have omitted,
and after you retired to the jury room, I will
either send in a note that there are no
exceptions or I will bring you in for some
corrections, but I will conclude by saying

Charge

2 that the oath that you took at the beginning,
3 to sum up your duty, without fear or favor to
4 any man, you will well and truly try the issues
5 between these parties according to the evidence
6 given to you in court and the laws of the United
7 States.

8 Now, we have been fortunate for a week.
9 Nobody has had illness or family incident.

10 So Mr. Fitton and Miss Bochstein will be excused,
11 and I will ask the Clerk to swear a marshal to
12 keep the jury in custody.

13 THE COURT: Yes, your Honor.

14 (The Court Clerk swore in the marshal.)

15 THE COURT: All right. Do you want to
16 go into the jury room and get some things?

17 ALTERNATE JUROR: Yes, I have an umbrella.

18 THE COURT: All right, Mr. Quinn, you and
19 the other jurors can follow.

20 (The jury leaves the courtroom.)

21 THE COURT: Miss O'Brien, have you any
22 exceptions?

23 MISS O'BRIEN: Yes, just one, your Honor.

24 Your Honor has made a statement that you can
25 consider a witness's relationship to the
37

Charge

2 Government. I also ask that they may consider
3 any relationship a defense witness might have to
4 the defendant, specifically, Mr. Peterson's
5 association with Mr. Staley.

6 THE COURT: Well, you give me a request.
7 I try to balance my charges. Unless I have to
8 make some correction for Mr. Grossman, I will
9 let that pass.

10 MR. GROSSMAN: There are four things.

11 THE COURT: Wait just a minute. I want to
12 see what I said on that.

13 I said the Government.

14 Yes, Mr. Grossman. Any exceptions?

15 MR. GROSSMAN: In reference to Count 4
16 and Count 6 as to amount of \$2,000. It is
17 true that the amount doesn't have to be proved,
18 but the amount of \$2,000 goes towards the
19 credibility of the witnesses who are testifying.

20 THE COURT: What do you mean by that?

21 MR. GROSSMAN: Well, some of the witnesses
22 testified they gave \$150, which comes out to
23 \$1150. Some gave \$500, which came out to \$1500.
24 There is a divergence of statement by the three
25 witnesses as to the amounts, so therefore it goes

Charge

2 to the credibility of the witnesses who were
3
4 testifying.

5 THE COURT: I said they could consider
6 inconsistencies, but you want me to say the
7 indictment isn't evidence, and the \$2,000 I don't
8 think creates an inconsistency. I don't think
9 there is anything else I need say on that.

10 MR. GROSSMAN: Now, in the aiding and abet-
11 ting, Justice Hand's -- you said everything
12 except that you didn't say that he seeks that-- the
13 defendant seeks by his own action to make it
14 succeed, the aiding and abetting.

15 THE COURT: I said that.

16 MR. GROSSMAN: You said that?

17 THE COURT: Yes.

18 MR. GROSSMAN: To make it succeed?

19 THE COURT: I'm quite sure. That he
20 seeks by his action to make it succeed.

21 MR. GROSSMAN: All right.

22 Now, as to the guns operable, as to that
23 statement, I am taking an exception.

24 THE COURT: Yes, all right. I am quite
25 sure that that is the rule in the Second
Circuit.

2 MR. GROSSMAN: Now, also that it was
3 incumbent upon the Government when they mentioned
4 that a stolen car was being in front of the
5 bank that it be corroborated. There was no
6 corroboration as to that material fact, which is
7 an important item in this case. It was just
8 a statement by a witness without corroboration.

9 THE COURT: Well, it was a statement by an
10 accomplice witness. There is no requirement
11 of corroboration in the Federal Court, and it
12 is not an essential element of the crime.

13 MR. GROSSMAN: The corroboration of a
14 material fact in the case.

15 THE COURT: I stated that they could
16 believe the uncorroborated testimony of an
17 accomplice but that they must --

18 MR. GROSSMAN: That I know.

19 THE COURT: -- but that they must receive it
20 with caution and weigh with great care.

21 MR. GROSSMAN: All right.

22 THE COURT: I am going to leave it that
23 way.

24 MR. GROSSMAN: All right, I take an exception
25 to that.

2 THE COURT: Yes, all right.

3 MR. GROSSMAN: Thank you.

4 THE COURT: All right, I am going to leave
5 it.

6 I guess we will have to send Mr. Staley down-
7 stairs and get him back up.

8 MR. GROSSMAN: May I just talk to him for a
9 few minutes.

10 THE COURT: Yes.

11 One more think on this. Suppose I just
12 mark for the Court's exhibit defendant's requests
13 to charge.

14 (Same marked Court Exhibit 1.)

15 (Jury note marked Court Exhibit No. 3.)

17 (Jury note marked Court Exhibit 4.)

18 THE COURT: All right, bring in the jury,
19 please.

20 (Jury returns to the courtroom.)

21 THE COURT: Mr. Foreman, I have your note
22 saying you have reached a verdict.

23 Will you announce it?

24 THE FOREMAN: We, the jury, find the
25

Verdict

2 defendant, Daniel Staley, guilty on all seven
counts.

3 THE COURT: All right, Mr. Grossman, I presume
4 you want the jury polled?

5 MR. GROSSMAN: Yes, please.

6 THE CLERK: Ladies and gentlemen, I have
7 received your verdict. You say you find the
8 defendant guilty on Counts 1 through 7?

9 (The jury was polled, and the verdict
10 was confirmed as above stated.)

11 THE COURT: Ladies and gentlemen, I thank
12 you for the time and effort that you have put
13 into this case. I think for the new jurors it
14 has certainly given a demonstration of the
15 protections we try to provide for defendants
16 and the tasks that the Government has.

17 You are now free to talk about the case.
18 You do not need to answer anybody's questions
19 about it. You should not discuss deliberations
20 in the jury room. That is something that
21 is confidential and cannot be used to attack a
22 verdict.

23 I think you might be interested to know
24 some of the things I got at the side bar.

Verdict

2 The police report shows that Mr. Staley's
3 car was outside the Bayside Bank but he didn't
4 put down the name of witnesses so the Government
was not able to bring anybody in.

5 I don't know what the reason is that Sonny
6 was not here. I didn't give you the missing
7 witness charge because I thought it might have
8 been more prejudicial to the defendant than to
9 the Government, but at any rate, nobody called
10 him, and the reason I released Mr. Fennel isn't
11 just because he was testifying in this case but
12 it was because other government agents thought
13 he might be helpful on the street in ferreting
14 out other crimes.

15 I have tried to be fair in my dealings with
16 everyone. There was a time when Mr. Bastian
17 said that he would testify for the defendant in
18 the case. In this case he has been convicted
19 in a jury trial at which Mr. Fennell -- and I'm
20 not sure whether one of the other defendants
21 testified. He is awaiting sentence. His lawyer
22 was uncertain whether to permit him to testify.
23 Thereafter he talked with Miss O'Brien and said
24 that he would testify for the Government in this

case if his lawyer wanted him to, but not having
testified in his own trial, he might have run
some risk in testifying here. One of the
difficulties in a case like this is in cross-
examination of accomplice testimony, because
you properly view it with caution and you took
time enough to study the case. I am glad you
have reached a verdict, and Mr. Rijokus will give
you your cards and you are now excused. Is
it still another week for this jury?

THE CLERK: I don't think so.

THE COURT: All right. I think you have done your job. You have, it's a real responsibility.

(The jury was excused.)

THE COURT: Miss O'Brien, the defendant
is in custody now under bail that he hasn't
been able to meet. I suppose there is no reason
to increase the bail.

MISS O'BRIEN: No, your honor.

THE COURT: I think having kept it while he was still presumed innocent, I should let it stand, Mr. Grossman.

MR. GROSSMAN: I would still like to see

2 it reduced, your Honor, because we are going
3 to go up on appeal. Now, that the jury is out,
4 I don't understand it. I think the man is
5 innocent. I don't understand how corroboration
6 could have been made by people of that kind,
7 of that type of witness.

8 THE COURT: You might have needed more
9 corroboration in the State court. I don't know
10 about that. If you want to help on the appeal,
11 I can sentence him now without a pre-sentence report
12 and then I will get a pre-sentence report, and
13 if the conviction is affirmed, I will entertain
14 a motion to reduce. Otherwise I will wait
15 until sentence.

16 MR. GROSSMAN: I would rather wait until
17 your probation report comes in.

18 THE COURT: All right, and you will be
19 notified.

20 MR. GROSSMAN: Then you can see his background
21 and so forth.

22 THE COURT: Of course. Late September
23 sometime.

24 MR. GROSSMAN: Of course I wish to make the
25 ordinary motion. I move to set aside the verdict

2 as contrary to law, contrary to the weight of
3 the evidence, and also ask for judgment of acquittal
4 pursuant to rules.

5 THE COURT: I assume you made all the
6 motions, and I deny the motion.

7 I think there was a jury question, and I
8 trust that my rulings if not perfect were fair.

9 MR. GROSSMAN: Yes, they were.

10 Rule 29.

11 THE COURT: Certainly the defendant was
12 vigorously defended.

13 MR. GROSSMAN: I hope so.

14 THE COURT: I think you did everything you
15 could for him.

16 I don't know what the story is on Sonny.
17 I think he was described as a former employer.

18 MISS O'BRIEN: I do know, your Honor,
19 if I'm --

20 MR. GROSSMAN: There is always a question
21 of money. It's a question, can you go into that
22 neighborhood -- I tried four times. I couldn't
23 get out of the car, I was afraid.

24 MISS O'BRIEN: Your Honor, the FBI agent
25 a week before the trial went to Sonny and gave him

a subpoena for one of the earlier trial dates that we originally had scheduled. He talked to Sonny at the time. Sonny informed him at that time, "You got the wrong man. Tex did it, but I'm not going to come down and testified."

He did not show up, so we didn't inform Mr. Grossman as to Sonny's statement to the agent as to what the were. Tex was here. Mr. Grossman spoke to him.

MR. GROSSMAN: I spoke to him. I saw the type of person he is. There's no sense compounding evidence of that type. I do know that. I tried my best. It was a question, if the neighborhood was only fair to me, and if I would have had the resources behind me, perhaps I could have hired an investigator of his own race who could have gone into that neighborhood, gotten statements and witnesses just the way that the FBI does. You see, one thing about the Government, you can't counteract the investigation of the FBI. You can't, it's impossible. Washington just told us that.

THE COURT: Their investigation isn't always that complete. I would feel more

comfortable about the verdict if they had --

2 MR. GROSSMAN: I tried to find Tex at least
3 four, five days. Yesterday Danny Colson goes
4 down and gets him. I can't camp on his home.
5 I can't hang around that neighborhood.

6 THE COURT: I have people brought in that
7 the FBI has been looking for for seven months.
8 You don't always find them when you want them.

9 MISS O'BRIEN: If I may state the reason,
10 the FBI tried on four prior occasions to locate
11 Tex and finally located him the day he was here.
12 In addition to that, Mr. Grossman before trial
13 had made this argument that he did not have
14 ~~investigators~~, and the Court offered to appoint
15 an investigator under the Criminal Justice Act
16 at that time. He didn't avail himself.

17 THE COURT: The verdict is in.

18 On date of sentence you will be notified
19 of right to appeal.

20 MR. GROSSMAN: I want to say one thing.
21 I know you have a large calendar. I am only
22 defending people, and I'm practicing 28 years,
23 who I think innocent. I don't and never have
24 been retained or will retain my services to a

2 person who I think is guilty.

3 THE COURT: The dean of Hofstra Law School
4 disagrees with your philosophy, but I disagree
5 with his ethics.

6 MR. GROSSMAN: I wish to thank you for
7 the way that you conducted the court.

8 THE COURT: Take Mr. Staley down.
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1 O'Brien-Summation

2 Mr. Grossman told you or asked you why don't
3 we have any photographs of Mr. Staley. Why don't we
4 have? Weren't there any guns? Why don't we have
5 Mr. Staley's fingerprints in the bank or any other
6 evidence concerning that. Why are you relying upon
7 accomplice testimony, ladies and gentlemen, because
8 you have heard the testimony; you know there is no
9 photographs because Mr. Staley never robbed the bank
10 himself, because Mr. Staley would give guns to addicts
11 and to other criminals in the neighborhood. Yes,
12 members of the Seven Crowns, members of organizations
13 and dangerous gangs.

14 You have heard the testimony Mr. Staley made.
15 Sure there were no photographs. Mr. Staley would send
16 Sonny to stash the guns on each and every occasion.

17 What did Mr. Coates testify again specifically
18 to this robbery on December 12th that he met with
19 Mr. Staley five days before? Mr. Staley said, "I got
20 a bank to hit." Mr. Coates thought it over, considered
21 it. He said, "All right."

22 Staley told him, "I have got it all cased out."
23 Mr. Derrick testified that sometimes before the
24 robbery, Coates contacted him. Coates told Derrick
25 Danny's got a job for us.

Summation -O'Brien

1
2 he's had, but what were those arrests, ladies and
3 gentlemen?

4 He's been arrested for a number of occasions,
5 Southern Los Angeles, marijuana charges. Vast majority
6 of arrests made. Some mention made, Town of Hempstead.
7 And claims it wasn't him. Someone else using his name.
8 Mr. Fennell has never told you under any circumstances
9 that he was a drug addict or dope fiend, as Mr. Gross-
10 man would testify, have you believe, and had stated in
11 his summation.

12 Mr. Derrick has never told you that he's a dope
13 fiend or that he was under the influence of narcotics.
14 He said at one time he used narcotics, but he never
15 said that he used narcotics during the period in
16 question, and we are dealing with during the bank
17 robbery.

18 Mr. Coates has in fact told you that he was
19 an addict at the time of the robbery as has Mr.
20 Peterson in the case.

21 I would ask you, ladies and gentlemen, first
22 to look at the testimony of Mr. Fennell. Try to
23 rationalize in your own mind why any man would come
24 to the United States Attorney's office, then before
25 the Grand Jury and then subject himself to a day or
so of cross examination by Mr. Grossman in a court of

Summation-O'Brien

1 4
2 law. Why would he do all those things, ladies and
3 gentlemen, if he were merely lying?

4 Now he told you quite candidly that the
5 other counts against him were dismissed, but he also
6 told you, ladies and gentlemen, he's been subjected
7 to penalties of twenty years imprisonment. He's not
8 been granted immunity. He is not going scot-free,
9 ladies and gentlemen. He has candidly admitted his
10 participation in the robbery. He is subject to twenty
11 years imprisonment. Certainly, he hopes his Honor
12 will take that into account at the time of sentence.
13 He hopes if he cooperates, he will get less of a
14 sentence by cooperating, but there isn't any evidence
15 whatsoever, that he was instructed to lie. Why would
16 Mr. Coates lie when he knows he is going to be sentenced
17 by Judge Judd in a few weeks? Why would he lie to the
18 Judge, increase his sentence? Why would he subject
19 himself to further perjury counts? Mr. Grossman would
20 have you believe that Mr. Coates first of all, lied
21 because there was the fight in the grocery store,
22 a fight over two dollars and some odd cents with the
23 groceries.

24 MR. GROSSMAN: Your Honor, I object to that.
25 It wasn't two dollars. It was twenty eight dollars.

THE COURT: It was twenty dollars in groceries

5

1
2 this morning.

3 MS. O'BRIEN: Twenty dollars in groceries.

4 Mr. Grossman would have you believe that Mr. Coates
5 is so vicious or so I dont know what. He was so
6 bent on singing, Mr. Staley, why? Because Mr. Staley
7 wouldnt give him twenty some odd dollars of groceries
8 in the store. Is that reasonable, ladies and gentlemen,
9 based on your own common sense?

10 Do you believe any individual would come and go
11 to all the trouble of testifying before the Grand Jury,
12 coming to the U.S. Attorney's office and going before
13 a court of law, and standing cross examination merely
14 for twenty dollars or merely for a grudge on his side
15 of this amount?

16 Mr. Coates told you that he remembered the fight.
17 He remembered the incident. Mr. Staley was involved in
18 a discussion with Mr. Bashian and Mr. Staley has used
19 that very discussion, that very incident and has read
20 the details, but he is putting in the name, Larry
21 Coates now, ladies and gentlemen, in order to have you
22 believe that there is some reason or some manner that
23 Mr. Coates would deliberately lie and take the stand
24 in order to put him in jail.

25 I ask you, is that reasonable?

And beyond that, ladies and gentlemen, whether

1
2 Mr. Grossman has led you to believe that myself
3 or agents, have gotten together with the three men.
4 That we also have attempted to give them a question
5 and answer session, that we have attempted to tell
6 them what to say. You heard the testimony of
7 Mr. Derrick, ladies and gentlemen. Quite candidly,
8 I interviewed them, each one at a time, and on each
9 occasion, they volunteered the information.

10 I did not tell them who was involved or what
11 was involved in the case. We did not tell them about
12 Daniel Staley. They themselves were the first ones
13 to volunteer information about Daniel Staley.

14 MR. GROSSMAN: Your Honor, I wish to object to
15 this. I mean, we all know what goes in front of the
16 Grand Jury. We know that there is no attorney for
17 the defendant, and you ask leading questions.

18 THE COURT: I think Ms. O'Brien was addressing
19 to the question of whether she had put words in the
witnesses' mouths.

20 MR. GROSSMAN: Perhaps someone did then.

21 THE COURT: And I think again, Ms. O'Brien
22 should make plain that she is not trying to tell the
23 jury what she did out of the presence of the courtroom
24 She is trying to summarize what she believes the witnesses

1

2 You yourselves remember what Mr. Grossman said
3 during summation and throughout the trial. I ask you,
4 is an illiterate man a man that doesn't know what
5 is going on?

6 Can he run a grocery store at 15, 18 hundred
7 dollars a week?

8 How about this man? This man has a record of
9 convictions for possession of a weapon. This man
10 that when he was introduced to Mr. Coates, Mr. Derrick,
11 rather, took one look at his jacket and said, "Yes,
12 it's a .38 Magnum, sawed off shotgun."

13 How does he know at a moment's notice, Mr. Coates
14 Mr. Derrick, had a .38 Colt Magnum shotgun?

15 Because, ladies and gentlemen, Mr. Staley is
16 not an illiterate grocery store owner. Mr. Staley is
17 an individual that has placed guns in the hands of
18 bank robbers, in the hands of people that have been
19 accused in the past of being attempted murderers.

20 He has schooled them, ladies and gentlemen, schooled
21 them in the art of bank robbery.

22 MR. GROSSMAN: Your Honor, I object again. There
23 is no basis for this schooling. I am moving for a
24 mistrial. It is prejudicial. It is inflammatory.
25 It should not be said. I don't understand it.

19

1 He told them to do this and that, and rob
2 banks. He's gotten the drivers for them. He has,
3 at times, himself participated directly in driving
4 the switch car that was used in these robberies, and
5 yes, he has shared in the proceeds of his educating
6 these individuals.

7 He has himself received a share of each and
8 every robbery that was testified to. We ask, ladies
9 and gentlemen, that you consider all the evidence
10 and that you not act as advocates. Some of you on
11 one side, some of you on the other side. I would ask
12 that all of you attempt to reconstruct in your own
13 minds, exactly what happened on these robberies.

14 Try to reconstruct in your own minds who is telling
15 the truth and who is not telling the truth. Try to
16 consider the motivation of all these individuals in
17 order for you to form a conclusion as to Mr. Staley's
18 participation or his failure to participate in this
19 robbery.

20 It is our conclusion, ladies and gentlemen,
21 the evidence in the case, rather than Mr. Staley was
22 an aider and abetter in this crime. He shared in
23 the proceeds of these crimes and that he in fact,
24 conspired with all the individuals to commit these
25 bank robberies, and that he is in fact, guilty as he

1 21 Petersen - cross - O'Brien

2 the store?

3 A No.

4 Q Did you ever hang around the store socializing?

5 A No.

6 Q Did you ever pop drugs in the store?

7 A No. I mean, the store is a place of business.

8 It's not a place to hang out in. It's not a pool room.

9 Q Did you ever meet friends there?

10 A No.

11 Q You never saw anybody else receive drugs in
12 the store?

13 A No.

14 MR. GROSSMAN: Your Honor, I'm going to object
15 to this line of questioning unless there is proof on
16 the direct.

17 She is now bringing in extraneous matters.

18 She can only cross-examine in reference to the direct
19 testimony or questions leading away from the direct.

20 She is now bringing up extraneous matters.

21 THE COURT: Please, lady and gentlemen, the
22 directions as to law should come from me and not from
23 counsel.

24 On cross-examination an attorney may bring up
25 anything that bears on the credibility of the witness

1
2 A That was before the robbery went over. That
3 was the agreement he had made.

4 Q Did he ever ask you for a particular amount
5 of money?

6 A He didn't ask for a particular amount, but he
7 was talking about -- around what he was expecting. And Larry
8 Coates said, "Well, I'm going to give him 500 because I
9 worked with him before."

10 Horace Peterson said, "I will give him 500."

11 I couldn't see giving him 500. And I went in
12 the bank.

13 Q Did you give him any money?

14 A Yes. I gave him \$150.

15 Q What happened after you gave him this money?

16 A After I gave him the money, then I gave him my
17 pistol because I left immediately after I gave him the money.
18 Because his brother -- his own brother had told me that we
19 were supposed to -- supposed to have been robbed.

20 THE COURT: You can't talk about anybody else.

21 MS. O'BRIEN: That's hearsay.

22 Q All right. You had returned the guns and you
23 yourself had given to the defendant \$150; is that correct?

24 Did you observe the other two individuals,
25 Larry Coates and Horace Peterson, give to Mr. Staley an

M.V. Staley - Grossman

STATE OF NEW YORK)
: ss.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that defendant is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 15 day of ~~Sept~~, 1975 defendant served the within ~~Appendix upon~~ M. L. Attorney

attorneys(s) for

Appellee

in this action, at

225 Cadman Plaza East
Brooklyn, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

.....
ROBERT BAILEY

Sworn to before me, this
day of

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976